

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SAM KIRSCH,

Plaintiff,

v.

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CIVIL ACTION NO. 1:20-cv-01113-RP

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**CITY OF AUSTIN AND OFFICER
ROLAN ROMAN RAST,**

Defendants.

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**DEFENDANT CITY OF AUSTIN'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiff's First Amended Complaint (Doc. No. 4). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiff's First Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment.¹

This Defendant denies the allegations contained in the first section labeled "Introduction" in Plaintiff's Amended Complaint.

PARTIES

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1.

¹ Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

2. Defendant admits the allegations contained in Paragraph 2.
3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies same.

JURISDICTION

4. Defendant admits the allegations contained in Paragraph 4.
5. Defendant admits the allegations contained in Paragraph 5.
6. Defendant admits the allegations contained in Paragraph 6.

VENUE

7. Defendant admits the allegations contained in Paragraph 7.

FACTS

8. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 8 of the Amended Complaint and therefore denies same.
9. Defendant denies the allegations contained in Paragraph 9.
10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Amended Complaint and therefore denies same.
11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Amended Complaint and therefore denies same.
12. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 12 of the Amended Complaint and therefore denies same.
13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of the Amended Complaint and therefore denies same.
14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Amended Complaint and therefore denies same.

15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the Amended Complaint and therefore denies same.
16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the Amended Complaint and therefore denies the same.
17. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of the Amended Complaint and therefore denies the same.
18. Upon information and belief, Defendant admits the allegations contained in Paragraph 18.
19. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of the Amended Complaint and therefore denies same.
20. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the Amended Complaint and therefore denies same.
21. Upon information and belief, Defendant admits that Plaintiff made the comments which are quoted in Paragraph 21. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in the remainder of Paragraph 21 of the Amended Complaint and therefore denies same.
22. Defendant admits the allegations contained in the first sentence of Paragraph 22. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in the remainder of Paragraph 22 of the Amended Complaint and therefore denies same.
23. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of the Amended Complaint and therefore denies same.
24. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 24 of the Amended Complaint and therefore denies same.

25. Defendant adopts and incorporates its responses to the previous paragraphs of the Amended Complaint.
26. Defendant admits the allegations contained in Paragraph 26.
27. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 27 of the Amended Complaint and therefore denies same.
28. Defendant denies the allegations contained in Paragraph 28.
29. Defendant adopts and incorporates its responses to the previous paragraphs of the Amended Complaint.
30. Defendant admits the allegations contained in Paragraph 30.
31. Defendant denies the allegations contained in Paragraph 31.
32. Defendant adopts and incorporates its responses to the previous paragraphs of the Amended Complaint.
33. Defendant denies the allegations contained in Paragraph 33.
34. Defendant adopts and incorporates its responses to the previous paragraphs of the Amended Complaint.
35. Defendant admits the allegations contained in Paragraph 35.
36. Defendant denies the allegations contained in Paragraph 36.
37. Defendant denies the allegations contained in Paragraph 37.
38. Defendant denies the allegations contained in Paragraph 38.
39. Defendant denies the allegations contained in Paragraph 39.
40. Defendant adopts and incorporates its responses to the previous paragraphs of the Amended Complaint.
41. Defendant denies the allegations contained in Paragraph 41.

42. Defendant denies the allegations contained in Paragraph 42.
43. Defendant adopts and incorporates its responses to the previous allegations contained in the Amended Complaint.
44. Defendant denies the allegations contained in Paragraph 44.
45. Paragraph 45 is a request for a trial by jury and does not contain allegations that require Defendant to admit or deny.
46. Defendant denies the allegations contained in Paragraph 46 and specifically denies that the Plaintiff is entitled to any relief whatsoever of and from the Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.
4. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,
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**ATTORNEYS FOR DEFENDANT CITY OF
AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 1st day of February, 2021.

Via ECF/e-filing:

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